the petitioner who was at the count, was not satisfied with the excess of 64 votes between the number counted and the total number of the votes in the ballot boxes. The returning officer said that on the question of this discrepancy he refused a re-count because under regulation 25(8)(a) the discrepancy of 64 did not exceed 1% or more, of the votes cast for the two candidates. He took into consideration that even if the 64 excess votes had been abstracted from the total for the successful candidate and given to the petitioner, it would not have affected the result. He therefore refused the request for a re-count under regulation 25(8)(a). Apparently he did not also think it necessary to exercise his general powers to order a re-count.

He denied that any demand for a re-count was made on the ground specified in proviso (b). His evidence was not challenged substantially on this point. In my view, the returning officer was perfectly correct in his interpretation of regulation 25(8)(a) and in his arithmetical appreciation of the state of the voting. In my view, too, if no application under regulation 25(8)(b) was made, then he could not be said to have failed to discharge his duties or be charged with failing to order a re-count, even if the difference between the number of votes cast for the first respondent and the number of votes cast for the petitioner was 2% or less of the total number of votes cast. This is particularly so as the rule especially provides that the application for a re-count must be made by a candidate or his agent. In other words, in the absence of any demand by the petitioner for a re-count under proviso (b) of regulation 25(8), then no duty was cast on the returning officer to order a re-count and he could not be said to have failed to observe this provision of law regarding elections.

Further, even if the petitioner had properly exercised his right to a re-count under regulation 25(8)(b) and had indicated his intention with sufficient clarity to the returning officer or even if the petitioner could be heard by me on a ground he did not advance either at the count or in his petition, he still had to show that the result would have been affected or different and this he had singularly failed to do.

The petition therefore fails. It is dismissed with costs.

*Petition dismissed.*

Solicitors: *Lim Ewe Hock; Maxwell, Kenion, Cowdy & Jones.*

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## LAU FOO SUN v. THE GOVERNMENT OF MALAYSIA

[O.C.J. (Gill F.J.) July 30, 1969]

[Kuala Lumpur — Civil Suit No. 116 of 1963]

*Copyright — Literary work — Whether drawings prepared by engineer constitute original literary work — Copyright Enactment (F.M.S. Cap. 73) ss. 2, 3 & 4.*

The plaintiff, a chartered civil and structural engineer, claimed a declaration that he was entitled to the copyright in all documents and drawings prepared by him for the construction of schools for the Government.

**Held:** on the facts the plaintiff, in preparing the drawings, had substantially copied from P.W.D. drawings and therefore the plaintiff's drawings though they come within the meaning of "literary work" in the Enactment, were not original literary work so as to qualify for a copyright.

*Cases referred to:—*

(1) *Walter* v. *Lane* [1900] A.C. 539, 548.

(2) *University of London Press, Limited* v. *University Tutorial Press, Limited* [1916] 2 Ch. 601, 608.

(3) *Blackie & Sons Limited* v. *The Lothian Book Publishing Company Proprietary Limited* (1921) 29 C.L.R. 396.

(4) *Inala Industries Pty. Ltd. & Ors.* v. *Associated Enterprises Pty. Ltd.* [1960] Qd.R. 562, 569.

CIVIL SUIT.

*S.D.K. Peddie* for the plaintiff.

*Au Ah Wah* (Senior Federal Counsel) and subsequently *Ajaib Singh* (Senior Federal Counsel) for the defendant.

**Gill F.J.:** The plaintiff is a chartered civil and structural engineer carrying on business in Kuala Lumpur as a consultant under the name and style of "Lau & Partners". His claim in this action is for a declaration that he was until the 23rd day of January, 1963 solely entitled to and the owner of the copyright in all documents and drawings produced by him for the defendant pursuant to two contracts between him and the Permanent Secretary to the Ministry of Education on behalf of the defendant dated the 10th day of February, 1961 and the 22nd day of March, 1961 respectively, and that from and after the 23rd January, 1963 he was solely entitled to and the owner of the copyright in all the aforesaid documents which were not purchased by the defendant on that date. He is also claiming other and consequential reliefs including damages for infringement of copyright.

Under the terms of the contract dated 10th February, 1961 the plaintiff was to prepare designs and drawings for the construction of Sekolah Tun Fatimah in Johore Bahru. The contract dated 22nd March, 1961 was in respect of the design programme of the Ministry of Education for 1961. It covered any work

which the Ministry of Education required him to carry out in respect of school buildings. Clause 14 in each of the contracts provided that all documents prepared by the plaintiff in connection with the works were the property and copyright of the plaintiff subject to their use by the defendant for the particular works to which the agreement related, provided that the defendant might purchase the copyright at a fee of 1% of the total cost of the reinforced concrete works in the whole scheme and should, therefore, be entitled, either directly or indirectly, to make use of such documents for the carrying out of any additional or similar work.

In pursuance of the contract dated 10th February, 1961 (Exh. P8) the plaintiff prepared the drawings for the construction of Tun Fatimah School, for which he was paid, and the Ministry also purchased his copyright in those drawings.

As regards the contract dated 22nd March, 1961 in relation to the design programme of the Ministry (Exh. P9), the plaintiff had on 10th March, 1961 received a letter dated 8th March, 1961 (Exh. P27) from the Permanent Secretary to the Ministry of Education to confirm that he was to proceed with the designs of foundations, ground beams, etc. for the Methodist Boys' School, Port Swettenham, it being stated in the letter that he had inspected the site with the Ministry's clerk of works on 6th March, 1961 and taken the necessary plans on the morning of the date of the letter. As instructed by this letter, the plaintiff's firm prepared the structural drawings for the Port Swettenham School. Amongst the drawings for this project were drawings numbered 101 to 107 in the series 61020. The copyrights in all these drawings for the school were purchased by the Ministry.

At the request of the Ministry by letter or at meetings, the plaintiff's firm prepared numerous designs and drawings in pursuance of the general contract for the design programme for 1961 dated 22nd March, 1961 (Exh. P9). Some of the drawings were standard drawings for schools with seven or eight class-rooms, and there were several standard drawings to tie up with soil conditions. Amongst these drawings were the drawings numbered 109 to 128 in the series 61020.

There was considerable correspondence between the plaintiff and the Ministry of Education regarding the assignment of copyright. By its letter dated 26th July, 1962 (Exh. P17) the Ministry gave notice of intention to acquire copyright in all RC designs which the plaintiff had prepared for all projects of the Ministry, and the plaintiff handed over all the drawings asked for in that letter. He received a letter dated 30th August, 1962 (Exh. P18) with a list of the drawings which the Government intended to purchase. A letter dated 24th October, 1962 (Exh. P19) from the Ministry asked if he had any objection to the Quantity Surveyor's statements of costs in connection with the acquisition of copyrights under the terms of his agreement with the Ministry. The letter went on to say that a list was then being tabulated of all works using his drawings up to the date of service of the notice on him that the Government proposed to acquire the copyrights. A letter dated 15th November, 1962 (Exh. P20) stated that the claim of copyright fees in respect of projects for which tenders were called after the date of service of acquisition notice would not be considered at all.

In reply to plaintiff's letter of 26th October, 1962 asking for full particulars as regards the use of his drawings, a letter dated 9th April, 1963 from the Executive Engineer, Ministry of Education Works Division of the Public Works Department (Exh. P21) stated as follows:—

> "After very detailed and time-consuming checks it has been discovered that the drawings listed in your above referred letter do not appear to be used repeatedly on any other projects other than on those projects for which they were designed. Have you any particular projects for which you think the drawings were used repeatedly? If you have, please inform me and I will have another check.
>
> Until I hear from you, I do not therefore, propose to take further action on your above referenced letter."

A further letter dated 1st June, 1963 (Exh. P22) from the Executive Engineer to the plaintiff stated as follows:—

> "Reference the above subject (Ownership of Documents and Use of Copyrights) contained in your letter FSL/TMP dated 15th May, 1963 I have to say that when you were commissioned to put up design for project 'X' you are paid for this project. If the design is used again and again for other projects it is used 'repeatedly'. You are then perhaps legally right to claim fees for the use of your designs without purchase of copyright. I hope it is now clear.
>
> Are you now claiming copyright of any drawings? OR are you now claiming fees for use of the drawings? Please put up your exact claims so as to enable me to take necessary action."

By his letter dated 4th July, 1963 (Exh. P23) the executive engineer gave notice of intention to acquire copyrights in drawings 109, 110, 114, 119, 121 and 123 in the series 61020. There were four more letters from him (Exh. P24) still trying to agree on terms and conditions including fees for assignment of copyright. By a letter dated 4th March, 1964 (Exh. P25) he gave notice of intention to acquire copyright in drawings 113, 115, 116, 118, 120, 122 and 124 in the series 61020. A letter dated 12th October, 1963 (Exh. P26) from him in reply to the plaintiff's letter of the 10th October, 1963 stated as follows:—

"As far as could be traced, it does not appear that any of the drawings submitted by you have been used repeatedly. Unless you produce a list of places where you alleged that your drawings have been used by the ex-Architect Branch of the Ministry of Education, in 1963, within 7 days of receipt of this letter, I regret to say that no further correspondence on this subject would be entertained.

You, no doubt, appreciate that, unless you state specifically your claim, this office is unable to assist and, as you have stated that the matter is nearly a year old, it is about time that you make a specific claim if any at all."

It is common ground that at the end of 1962 or the beginning of 1963 the Government purchased from the plaintiff the copyrights in several drawings prepared and supplied by his firm. The actual numbers of the drawings, the copyrights to which were purchased by the Government, are contained in the vouchers (Exh. P16) by which payment was made to the plaintiff who actually assigned the copyrights on 23rd January, 1963. Apart from other drawings, the vouchers mention drawings 101 to 107, 111 and 128 in the series 61020.

The basis of the plaintiff's claim, as set out in paragraphs 5 and 6 of the statement of claim, is that in addition to using the designs and drawings which were prepared by him under the aforesaid contracts upon the works of which they were prepared the defendant has, without his consent and without having purchased the copyrights pursuant to the provisions of the said contracts, utilised the said designs and drawings for projects of the defendant other than those for which they were prepared and has thereby infringed the plaintiff's copyright in them. Paragraph 6 of the statement of claim mentions drawings numbers 109, 110, 114, 116, 119, 120, 121, 122 and 123 in the series 61020 in respect of which it is alleged that there has been an infringement of copyright by the defendant.

Evidence has been produced on behalf of the plaintiff that the Government had a number of schools built all over the country with the help of plans and drawings which were prepared by his firm without purchasing his copyright in such plans and drawings. In this connection, Loh Ah Koh (P.W.1), a building contractor, has given evidence to say that under three different contracts with the Government (Exh. P1, P2 and P3) he built three different schools for the Government with the help of drawings numbered 109, 110, 113, 116, 119, 120, 121 and 122 in the series 61020 as mentioned in the contracts and supplied to him by the Government. Tee Than Song (P.W.2), the managing director of Tee Than Song Construction Co., Ltd., has testified that his company built eighteen schools at various places in the country under four different contracts with the Government (Exh. P4, P5, P6 and P7) and that for the purpose of building these schools the Government supplied him with plans and drawings numbered 109, 110, 112, 113, 114, 117, 119, 120, 121, 123 and 126 in the series 61020 and drawings numbered 103, 105 and 108 in the series 61059 as mentioned in those contracts.

As regards the drawings in the series 61059, the plaintiff has stated in evidence that those drawings were prepared by his firm from original drawings supplied to him either by the Ministry of Education or the Public Works Department and that he is therefore not claiming any copyright in respect of them. This means that the only evidence which the plaintiff has produced with regard to user by the defendant of his drawings for the building of schools by P.W.1 and P.W.2 without purchase of the copyright in them is in relation to the drawings in the series 61020 mentioned in their contracts with the Government.

It is stated in paragraph 6 of the statement of claim that the plaintiff is unable to deliver full particulars of the use made by the defendant of his drawings until such time as he has been able to obtain from the defendant discovery in respect of the use made. It has therefore been contended that the list of drawings set out in paragraph 6 of the statement of claim as having been used by the defendant in infringement of his copyright is not intended to be a comprehensive list. However, there is not a scrap of evidence from which I can possibly infer that the defendant did make use of some other drawings of the plaintiff, nor has any evidence been given as to whether the plaintiff, before this action was set down for trial, made any attempt to obtain from the defendant discovery in respect of the use made of any other drawings. Moreover, there is no evidence that he replied to the Executive Engineer's letter of 12th October, 1963 (Exh. P26) asking him to produce within seven days of the receipt of the letter a list of places where he alleged that his drawings had been used by the Ministry. It is further to be observed that P.W.1 and P.W.2 between them built for the Government 21 schools at various places and, apart from the 61059 drawings, they used only drawings in the series 61020.

As regards the allegation in paragraph 7 of the statement of claim that the defendant had infringed the plaintiff's copyright in the designs and drawings prior to the date of purchase of the copyright in them on 23rd January, 1963, it is to be observed that although P.W.1 and P.W.2 entered into their various contracts with the Ministry before 23rd January, 1963 there is no evidence whatsoever as to the dates when they constructed the schools in respect of

which they were contractors. In any event, there is no evidence that the copyrights in the drawings on which this action is based, as mentioned in paragraph 6 of the statement of claim, were ever purchased by the defendant.

The defendant's statement of defence is that clause 14 in each of the two contracts on which the plaintiff's claim rests was entered into under a mistake of fact and that the designs and drawings supplied by the plaintiff as stated in paragraph 5 of the statement of claim were made from original drawings supplied by the Public Works Department. With regard to paragraph 7 of the statement of claim, the defendant admits purchase from the plaintiff on 23rd January, 1963 of copyrights in some designs and drawings, but it is denied that the plaintiff in fact had any copyrights in the said designs and drawings.

The first issue for my determination is whether or not the drawings prepared by the plaintiff were capable of acquiring copyright.

The law relating to copyright is contained in the Copyright Enactment (F.M.S. Cap. 73), which is a reproduction of the English Copyright Act, 1911. The material section of the Copyright Enactment is section 3, the relevant portions of which for the purpose of this case read as follows:—

"3. (i) Subject to the provisions of this Enactment, copyright shall subsist throughout the Federated Malay States for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if:—

(a) in the case of a published work, the work was first published within the Federated Malay States; . . .

(ii) For the purposes of this Enactment. 'copyright' means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public;"

"Literary work" is defined by section 2 of the Enactment to include maps, charts, plans, tables and compilations. Section 4(i) of the Enactment provides:—

"Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Enactment conferred on the owner of the copyright;"

Considering the provisions of the Enactment to which I have just referred, I have no difficulty in holding that the designs and drawings of the plaintiff, which are the subject-matter of this suit, are literary work within the meaning of the Enactment and consequently capable of acquiring copyright.

It is clear that for a copyright to subsist in a literary work as defined in the Enactment it must be shown to be the original work of the author. That brings me to the next matter in issue, namely, whether the designs and drawings made by the plaintiff were his original works or merely copies of existing documents belonging to the defendant. This indeed is the major question to be decided in this case, because the answer to this question would conclude the matter as to the success or failure of the plaintiff's claim and also dispose of the other issues in this case, namely, whether there has been any infringement of the plaintiff's copyright and what remedies he is entitled to.

As to what is original, it was stated by Earl of Halsbury L.C. in *Walter v. Lane*[1] that originality of thought or idea is not necessary to the right. The generally accepted definition of the word "original" is that stated by Peterson J. in *University of London Press, Limited v. University Tutorial Press, Limited*[2] in the following words:—

"The word 'original' does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and, in the case of 'literary work', with the expression of thought in print or writing. The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work — that it should originate from the author."

In *Blackie & Sons Limited v. The Lothian Book Publishing Company Proprietary Limited*[3] it was held that the object of the Copyright Act, 1911 is not to accord protection to ideas but to the particular form of expression in which an author conveys his ideas or information to the world. As stated by Mansfield C.J. in (S.C.) *Inala Industries Pty. Ltd. and others v. Associated Enterprises Pty. Ltd.*,[4] "Copyright protection is therefore not given to ideas or information, however novel or valuable, unless reduced into some form which can be characterised as literary work."

As I have stated before, the plaintiff's evidence with regard to the alleged infringement of copyright by the defendant is in relation to his drawings in the series 61020 which were used by P.W. 1 and P.W.2 for building schools for the Government. The sole question therefore to be decided is whether those drawings originated from the plaintiff or were copied from another work.

The essence of the plaintiff's evidence is that the drawings in the series 61020 were designed in his office at the request of and in pursuance of his second contract with the Ministry of Education (Exh. P9), although he is unable to say whether the request was made by letter or at meetings and he cannot remember which of the engineers did the designing and

which engineer or designer draughtsman did the calculations in relation to them. The Ministry informed him that they were going to build a number of schools in Malaya and asked him to give them a set of standard structural plans. He supplied two sets of superstructural plans for schools with seven class-rooms and eight class-rooms respectively, and to the best of his recollection he also supplied the Ministry with six different types of standard foundation plans with the help of which they could build any number of schools if they purchased his copyright in all those plans. It is true, he says, that the Public Works Department supplied him with some structural drawings, but they were out-dated and he had to redesign the whole structure. For example, the design of his beam in his drawing 61020/109 (Exh. P10) was different from the design of the beam shown in the drawing supplied to him by the Public Works Department (Exh. P11). The spans were also different. As difference in the span of the beam affects calculations, his drawings could not be said to be similar to the Public Works Department drawings.

The plaintiff has further testified that he supplied the Ministry with different drawings for different soil conditions (Exh. P12, P13, P14A and P14B) for the preparation of which no similar drawings were supplied to him by the Public Works Department. The calculations for the drawings were done in his office, although he is unable to produce the calculation books as they had been mislaid, but he had part of his calculations which had to be made for the purpose of the drawings (Exh. P28) and a register for all the drawings (Exh. P15). P28 contained only part of the calculations in respect of the drawings for the Port Swettenham School, but all his structural drawings in the series 61020 were not based on the drawings for that school. The burden of the plaintiff's evidence is that in preparing the drawings one has to calculate the bending moments, the sheer, the torsions and the loads etc. for the building and its structural members, so that it is not possible just to copy somebody else's work unless one is making a tracing of it.

Under cross-examination the plaintiff said that in preparing his own drawings he made use of some of the data contained in the drawings supplied by the Ministry of Education. He also admitted that apart from P11 he was given some other drawings by the Ministry to help in the preparation of his drawings for school buildings including the building for the school at Port Swettenham.

For purposes of comparison between his own drawings and the P.W.D. drawings the defence put in as exhibits the plaintiff's drawings for the Port Swettenham School numbered 61020/101-107 (marked D30a-f), a tracing of D30d (marked D31) and four P.W.D. drawings (marked D32, D33, D34 and D35). The plaintiff agreed that some of the dimensions and some of the details in his drawings D30a-f were similar to the dimensions and details in P11A and P11B, but he maintained that his drawings were not traced or copied from drawings supplied to him by the Ministry or the Public Works Department.

When asked to compare D31 (a tracing of D30d) with D32, he said that the staircase column in D31 was not the same as the staircase column in D32 because the foundation sizes were different. According to him, the difference in the design was the difference in dimensions and reinforcements. Apart from the difference in the foundation dimensions, he said, there were no differences in the structural drawings in the two plans. He went on to say that the rectangle in green on the top left corner of D31 was a typical cross-section through the column and that it was not exactly the same as in D32, because D32 showed that the column 3′ 3″ wide whereas in D31 the width was shown to vary from 24″ to 51″. He agreed, however, that the depth of the column in each drawing was the same, that the break in D31 was in exactly the same place as the break in D32 and that, to a layman, the two cross-sections looked alike.

The plaintiff was next asked to compare the P.W.D. drawing D33 with his own drawing D30f. He said that the dimensions of the roof beams in D30f were the same as the dimensions of the roof beams in D33 but that the reinforced hooks were bent differently. When asked to compare D30f with yet another P.W.D. drawing D34, he said that the roof beams in D30f were not the same as those shown in D34 because they were bent differently. He had this to say with regard to D30f in comparison with another P.W.D. drawing D35. The beams in D30f were not the same as the beams in D35 because the reinforced hooks were different. The length in D30f of these beams were shown as 5′ but D35 did not mention the sizes of the beams. The lappings were also different and so were the shapes of the stirrups, although the spans were the same and the reinforcements similar. D30f and D35, he concluded, were not substantially the same.

It is common ground that there was to be a six-inch drop in the long corridor right along the Port Swettenham School and that this drop was not shown in D30f. The plaintiff denied that the drop was not shown in D30f because it was not shown in the P.W.D. drawing D31, and he did not agree that D30f was a copy of D31. He said that he allowed for the six-inch

drop because he followed the architectural drawing, and he agreed that that was the only difference in section EE of D30f from the equivalent drawing in D35.

The plaintiff was next shown a drawing which, on the face of it, appeared to be his original work (marked D36). D36, he said, was traced from a drawing supplied to his firm by the Ministry. When asked to compare D36 with another P.W.D. drawing (marked D37) he said that the two drawings were not identical, because the details on the right hand side of D37 were not shown on D36. The other differences, he said, were that the staircase in D37 was in a different position from that in D36, that the drains in D37 were not shown in D36, that the main entrance to the hall in D37 was different from that in D36 and that the foundation details in D37 were different from those in D36. Nevertheless, he agreed that D36 was substantially similar to D37.

The defence next put in the plaintiff's drawings in the series 61020 numbered 109 (marked D48), 110 (marked D49), 114 (marked D50), 116 (marked D51), 113, 115, 118, 120, 121, 122, 123 and 124 (marked D52) and 119 (marked D53) for purposes of comparison with either the P.W.D. drawings or the plaintiff's own drawings D30a-f, the copyright to which had been purchased by the defendant. D48, he said, was not an exact copy of D30b because the dimensions were different, but he agreed that the general outlines were similar. Sections X-X and Y-Y in D30f were not the same as in D49 because the spacing of the bars was different, so that the quantity of steel was different. Spans were the same in section X-X but reinforcement steel was different and so were spans in Y-Y. The size of the drawing D53 was the same as that of D48, except that the length of the buildings in D48 was different and the staircases were also different. Layout details were not the same and the number of structural members was different. They were plans for two separate buildings, the building in one being larger than the one in the other by one class-room.

The plaintiff repeated under cross-examination that his firm was given a set of architectural drawings and a set of reinforced concrete drawings by the Ministry of Education, and that they were then asked to design whatever was necessary to produce working drawings. The paper drawings which the Public Works Department gave them were on paper similar to D35. It was not true, he said, that the P.W.D. plans supplied him with the major details and that the details put in by him were minor ones, and it was not true that all his structural drawings in the series 61020 were based on the drawings of the Port Swettenham School. He did not personally do the drawings 61020/109-124 but they were designed in his office, although he could not remember by which engineer, and the calculations were done by the engineer or the designer draughtsman concerned. Some of the calculations were in P.28 which contained only part of the calculations for the Port Swettenham School, but the rest of them had been lost and could not be found. It was possible, he said, that one of his draughtsmen traced the staircase column in D31 from the P.W.D. drawing D32.

In re-examination, the plaintiff said that the six-inch drop in the corridor of the Port Swettenham School affected other structures in the building, notably the staircase and the main beams on the first floor, resulting in a change in the shape of the drawings. He concluded by saying that it was not true that all he did was to copy the drawings from the P.W.D. drawings. In answer to a question by the court, he said that most of the data for the purposes of his drawings were not in the drawings supplied to him by the Public Works Department but he was supplied with the general outlines of the building.

The evidence of the defendant consists mainly of the evidence of Mr. Ho Tee Hian (D.W.1), an assistant engineer employed by the plaintiff's firm from 1st April to 30th September, 1961. His evidence is that the main work which the plaintiff's firm did was in connection with projects of the Ministry of Education and that he and the other engineers and draughtsmen in the firm worked on plans delivered to them by the plaintiff, which were architectural and structural plans supplied by the Public Works Department. Some of the plans supplied by the Public Works Department, he said, were directly traced and stamped as plans made by Lau & Partners. He considered that to be unethical, because the normal practice when you trace somebody's drawing is to acknowledge that fact on the drawing traced, which to his knowledge was not done.

He went on to say that he checked drawings D30a-f and that D31 was a tracing of D30d. When asked to compare D31 with D32, he said that, superimposing D31 over D32, he would say that steel reinforcements, thickness of slabs, dimensions, shapes of columns and hooks in the steel bars were exactly the same, the only difference being in the foundation and section BB in D31 and section YY in D32. Superimposing the sections, he would say that they were exactly the same except that in D31 they were called YY and in D32 BB. The other difference was that in D31 the dimension was shown as 24" — 51" as opposed to 3' 3" in D32.

In all other respects D31 was an exact tracing of D32 and substantially the two structural drawings were the same. Taking the two drawings together, even the break in the column for the staircase below ground level was exactly the same. In independent drawings by two draughtsmen the break normally would not be the same. This fortified his belief that D31 was an exact tracing of D32.

Comparing D30f with the P.W.D. drawings, the witness said that roof beams A1 — A27 in D30f were the same as roof beams CD1 — 16 and roof beams 1 & 16/C.D. in D33 except for the steel hooks for the bars which were bent differently. Roof beams A28 to A31 in D30f were identicial with roof beams in D34, the only difference being that the stirrups in D34 had been left out, which was a draughtsman's error. The hooks in the two drawings were bent differently, which was only a minor detail, as hooks could be bent in either way. Beams P1 — P13 in D30f were the same as the beams in D35 except that the hooks were differently bent and the stirrups were different, both of which were minor differences, but the spans were the same and the reinforcement shown in each plan was similar, with the result that the two plans were substantially similar. The first floor beams in the two drawings were the same except for the difference in the hooks and bars. D35 did not show any six-inch drop, nor was it shown in the main beams in D30f, although it was shown separately in section E-E: otherwise the two drawings were the same. The drop might have been omitted by accident but it was also possible that D30f was a transfer from D35. If D30f had been an original drawing and not copied from D35 the six-inch drop would have been shown. Without the aid of D35 the normal procedure for the firm would have been to make a structural drawing of their own which would then be their original drawing.

The witness went on to say that if the key plan D30b showed the end beams to be 18" x 9" and D30f showed them to be 24" x 9" then the indication was that D30f had been copied from D34. In other words, the mistake in D34 had been carried to D30f, because in accordance with the key plan the correct dimensions of the end beams were 18" x 9" and not 24" x 9" as shown in D34 and repeated in D30f.

The witness further said that the roof key plan and the first floor key plan in D30b and D38 were the same except for the spans which were shown as 23' 6" in D30b and 25' in D48. Without the figures the spans were exactly the same, the only indication as to the difference being shown by the numbers themselves. The beams shown in D30e and D48 were the same. The beams shown in D30f appeared to be the same as those shown in D48 except for the figure dimensions, so that D48 would appear to have been copied from D30b, D30e and D30f.

Comparing D49 with D30c in relation to the staircase, the witness said that they were different because of the six-inch drop in the corridor. D50 was the foundation drawing for a standard double storey multiple class-room school, and it was different from D30a, the foundation drawing for the Methodist Boys' School, Port Swettenham. It was not possible to use D30a in any part of the country because of the difference in soil conditions. The same would apply to D50. D51 and D52 were also foundation drawings. D53 was slightly different from D48 as the stair-cases were different.

The witness summed up his evidence by saying that, in general, the drawings in the 61020 series from 109 onwards were the same as the drawings D30a-f except for modifications in the foundations, staircases and figure dimensions, and that as far as he could remember the plaintiff's firm did only one design for the Ministry of Education which was their original design. Comparing the two sets of drawings, he would say that part of D30 drawings were original and part copied from P.W.D. drawings. He checked the drawings made by the plaintiff's firm in conjuction with the P.W.D. drawings, so that certain points required no calculation. Looking at the calculations in P28 he would say that it was possible that no calculations were made by Lau & Partners in respect of the superstructure in view of the details which were available from the drawings supplied by the Public Works Department. The calculations would seem to show that they were backwards from the P.W.D. drawings, getting the column loading for the superstructure.

Wong Kok Lai (D.W.2), senior technical assistant in charge of the Drawing Office, Education Works, Kuala Lumpur, said that he was unable to say whether all P.W.D. drawings in respect of the Ministry of Education works prior to July, 1961 were intact. He made a search and the only drawings which he was able to find were the drawings which were produced in court.

Having given careful consideration to the evidence produced before me, a great deal of which is in the nature of expert evidence as to the similarities and dissimilarities between the various drawings, I am satisfied that the plaintiff's drawings 101 — 107 in the series 61020 (D30a-f) were substantially copied from the P.W.D. drawings D32, D33, D34 and D35. Many of the dissimilarities which were enumerated were, in my view, insubstantial. This is abundantly clear from the plaintiff's own rather reluctant admissions and from the evi-

dence of Mr. Ho Tee Hian (D.W.1) which I have no hesitation in accepting in toto. A visual comparison of these two sets of drawings demonstrates that the plaintiff's drawings incorporated the main features of the P.W.D. drawings with some variations and additions. From Mr. Ho's evidence it is clear that the plaintiff's engineers used the P.W.D. drawings as the basis of their drawings, making some variations and additions in their drawings which they considered necessary. They did not draw their plans as their own original and independent work and then use the P.W.D. drawings from which to check their drawings. On the whole, I am satisfied that there is substantial similarity between the plaintiff's drawings and the P.W.D. drawings. I therefore hold that these drawings of the plaintiff substantially reproduced the contents of the P.W.D. drawings. The fact that the defendant paid for the copyright in those drawings, in my judgment, cannot by itself support the plaintiff's claim in relation to other drawings.

As regards the drawings D48 — D53, there is evidence before me that at least some of them were copied from the drawings D30a-f, as stated by D.W.1. Some of these drawings, as stated by that witness, were not similar to the drawings D30a-f but there is his evidence, which was never challenged, that the drawings in the 61020 series from 109 onwards were the same as the drawings D30a-f except for the modifications in the foundations, staircases and figure dimensions, and that as far as he could remember the plaintiff's firm did only one design for the Ministry of Education which was their original design. That evidence of his must necessarily destroy the submission by counsel for the plaintiff that the defendant had not produced one foundation drawing from which they alleged that the plaintiff had copied and the further submission on behalf of the plaintiff that he had shown infringement of drawings 113, 119, 120 and 121 in the series 61020.

The plaintiff has stated that all the drawings on which his claim is based were done by his engineers and designer draughtsmen. In other words, none of those drawings was actually prepared by him. That does not matter in so far as his claim for infringement of copyright is concerned, because they were drawn by engineers who were employed by him, but what is important is that he did not produce any of his engineers to testify that the drawings originated from them and were not copied from P.W.D. drawings. This was all the more important by reason of the undisputed fact that the P.W.D. did supply a large number of their own drawings to the plaintiff's firm. Nor was any attempt made to show that D.W.1 was not telling the truth when he said that as far as he could remember the plaintiff's firm did only one original design for the Ministry.

The most damaging evidence to the plaintiff's claim given by D.W.1 was when he said at the very beginning that some of the plans supplied by the Public Works Department were directly traced and stamped as plans made by Lau & Partners. This evidence was substantiated by the production by the defendant of D36 which admittedly was a tracing of a P.W.D. drawing and yet, on the face of it, appeared to be the plaintiff's original drawing. It is true that the defendant has not produced a P.W.D. plan to match each of the plaintiff's drawings on which the claim is based, but considering the evidence as a whole I am satisfied that the plaintiff was supplied with other drawings which it has not been possible for the defendant to trace.

The plaintiff gave evidence to say that his firm had to do a lot of calculations in respect of the drawings made by his firm and that he was able to produce only part of such calculations. The truth would appear to be that he has very little personal knowledge of these so-called calculations, and I am not prepared to accept his evidence that apart from the calculations produced there were other calculations which had been mislaid. It would seem clear to me that there were in fact no calculations in respect of the Methodist Boys' School, Port Swettenham. I am fortified in that belief by the evidence of Mr. Ho Tee Hian (D.W.1) that the calculations in P28 were made in reverse order and in conjunction with P.W.D. drawings. Moreover, what weight I could attach to the calculations and time sheets of the engineers and draughtsmen, if they were available, is indicated by the time sheets of the plaintiff's draughtswoman Judy Cho (D42, D43, D45 and D47) which show that she performed the impossible feat of working 28 hours on 24th September, 1962. I do not blame the plaintiff for this, but this state of affairs is a clear indication of his lack of personal knowledge of what his engineers and draughtsmen did. I am therefore compelled to repeat that the plaintiff would appear to have no personal knowledge as regards the drawings made by his engineers and that, in the absence of any of them having been called to give evidence on his behalf, I am driven to rely on and accept in toto the evidence of Mr. Ho (D.W.1) which, as I have stated before, was not seriously challenged. Nor was there the slightest suggestion that Mr. Ho was actuated by any malice towards the plaintiff. Indeed, as submitted by counsel for the defendant, Mr. Ho as an independent consultant of some standing was quite frank in his evidence and agreed without reservation with whatever there was in favour of the plaintiff.

To sum up, it is my view and I find as a fact, that in preparing the drawings on which this claim is based the plaintiff's engineers copied such portions from the P.W.D. drawings that they desired to include in their own drawings and that certain changes and additions were made. With the exception of some of the drawings, they did not make exact copies of the P.W.D. drawings but I am satisfied that they made substantial copies from them. In the circumstances, I hold that the plaintiff's drawings were not original literary work within the meaning of the Enactment so as to qualify for a copyright in them.

The action is therefore dismissed with costs.

*Action dismissed.*

Solicitors: *Skrine & Co.*

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## *RE* ONKAR SHRIAN

**[O.C.J. (Choor Singh J.) August 2, 1969]**
**[Singapore — Originating Motion No. 24 of 1969]**

*Criminal Law and Procedure — Foreigner arrested in Singapore for offence committed in West Malaysia — Application for return of foreigner to Malaysia opposed — Magistrate's court adjourning proceedings for applicant to apply for habeas corpus — Criminal Procedure Code (Cap. 132), ss. 54 & 375.*

*Habeas corpus — Applicant on bail and not in actual custody — Whether court has jurisdiction to make order asked for.*

*Extradition Act, 1968, ss. 12(1) and 37 — Constitution of Malaysia, art. 5 as applicable to Singapore under the Republic of Singapore Independence Act, 1965, s. 6, read with Criminal Procedure Code (Cap. 132), s. 375.*

A person at large on bail is not so restrained of his liberty as to be entitled to the writ of *habeas corpus* which for centuries has been issued only when the applicant is in illegal confinent. It follows therefore that if a person is not detained in custody he is not entitled to a writ of *habeas corpus*. A person on bail cannot by any stretch of imagination be said to be detained in custody and is therefore not entitled to a writ of *habeas corpus*.

In this case the learned magistrate was wrong in adjourning the proceedings to a later date to enable the applicant to apply for *habeas corpus*. The magistrate should have either made an order discharging the applicant or an order for his return to Malaysia. As the magistrate did not make any such order and as the proceedings in the magistrate's court had not been concluded and the applicant was on bail, he had no means of challenging the validity of those proceedings.

*Cases referred to:—*

(1) *Zahir Ahmad* v. *Ganga Prasad & Ors.* A.I.R. 1963 Allahabad 4.

(2) *Ram Manohar Lohia & Ors.* v. *State of U.P. & Ors.* [1968] Cr.L.J. 281.

(3) *Babulal Parate* v. *State of Maharashtra* A.I.R. 1961 S.C. 884.

(4) *Cox* v. *Hakes* (1890) 15 App. Cas. 506.

(5) *Barnardo* v. *Ford* [1892] A.C. 326.

(6) *Ex parte Corke* [1954] 2 All E.R. 440.

(7) *R.* v. *Spilsbury* [1898] 2 Q.B. 615.

(8) *Re Isbell* [1930] 1 D.L.R. 393.

(9) *Ex parte Seriesky* (1912), 10 D.L.R. 612.

(10) *Re Bhagwan Singh* (1914), 17 D.L.R. 63.

(11) *Verrault* v. *Lachane* [1929] 2 D.L.R. 900.

ORIGINATING MOTION.

*David Marshall* for the applicant.

*Lim Cheng Pah* (Deputy Public Prosecutor) for the respondent.

**Choor Singh J.:** This is an application under paragraphs (b) and (c) of section 375 of the Criminal Procedure Code (Cap. 132) for a writ of *habeas corpus*.

The facts according to the applicant's affidavit, are that the applicant, who is a foreigner, was arrested in Singapore at his hotel by the police on 17th July 1969 at 3 a.m. without a warrant of arrest, for an offence alleged to have been committed in Kuala Lumpur. He was produced before the ninth magistrate's court in Singapore on the same day and there he learnt that a warrant for his arrest purportedly issued by the Kuala Lumpur sessions court had arrived in Singapore at 8.30 a.m. that day. It is alleged that a little later this warrant was endorsed by a Singapore magistrate and that the said warrant bears no authentication of any shape or form. At 4 p.m. the same day the applicant was released on cash bail in the sum of $5,000 and the proceedings were adjourned until 3 p.m. the following day. On 18th July 1969 at 3 p.m. the applicant appeared in the ninth magistrate's court where the Deputy Public Prosecutor made an application to the court to order the return of the applicant to Malaysia under the provisions of section 54 of the Criminal Procedure Code. This application was opposed by counsel for the applicant on several grounds whereupon the ninth magistrate's court adjourned the proceedings to 1st August 1969 to enable the applicant to apply for *habeas corpus*.

The application is "for an order that a writ of *habeas corpus* be issued against the respondent* to produce before this honourable court the applicant being taken and detained under custody of the respondent and thereafter released on bail, together with the day and cause of his being taken and detained, to undergo and receive all and singular such matters and things as the honourable court shall then and there consider of concerning him in his behalf, on the grounds following", and there are set out six grounds on which it is alleged

* 9th Magistrate, Singapore.